

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 125 OF 1999

1.Nagesh Dharma Godke,
2.Dharma Sonba Ghodke.
3.Sou. Rahibai Dharma Ghodke ..Appellants.
V/s
The State of Maharashtra. ..Respondent.

Shri Deepak Girme for the appellants.
Mrs. P.H.Kantharia,A.P.P.for the State.

**CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.**

DATE : 29TH SEPTEMBER, 2004.

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

. This is again a case of physical, mental harassmmment of the wife by the husband and in-laws and further committing murder by pouring kerosene and setting her ablaze.

2. The appellant No.1, husband, appellant No.2 father-in-law, appellant No.3 , mother-in-law are convicted by the Additional Sessions Judge, Pune for committing the murder of wife/daughter-in-law, Anita, (deceased), on the evening of 25/1/1998, at about 6.30 p.m. in their house, intentionally and knowingly causing her death by pouring kerosene on her person and

setting her on fire. They were accordingly convicted and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs. 1000/-, in default to suffer rigorous imprisonment for one year and sentenced to rigorous imprisonment for two years and to pay fine of Rs. 1000/- each and in default to rigorous imprisonment for six months, under Section 302 r/w section 34 and under Section 498-A of Indian Penal Code respectively.

3. The deceased married with the appellant-accused Nagesh, son of the appellant accused Nos. 2 and 3 on 16/2/1997. The said arranged marriage was in relations. The deceased Anita's father, Arjun Adsule, is the real brother of appellant No. 3 Rahibai. The deceased was residing jointly with her husband and in-laws at kolewadi, Pune. Her father was residing at Solapur. The deceased complained to her parents about the regular ill-treatment by the husband and in-laws. Therefore, the father of deceased requested his sister Rahibai-accused No.3 to treat the deceased Anita properly. He also requested his another sister Rukmini, who was residing in Fughewadi to persuade all the accused to treat Anita properly. As the father was worried about her well being and married life, hence, he

shifted to Pune and started living at Fughewadi. The deceased, during the Sankrant festival, visited to her parents' house and again disclosed the ill-treatments at the hands of appellant-accused. On earlier occasions, at Solapur, at the time of Gudipadva and of Diwali, she had also complained about the ill-treatment. The deceased Anita even refused to go to husband's house.

4. On 24th January, 1998, accused No.1 and accused No.3 came to take Anita back, but she cried and refused to go along with them. On 25/1/1998 at about 11.30 a.m. accused No.1 came to her and assured her good life and requested her father to forgive them and forget the past. The deceased therefore, based on these assurances went along with the accused No.1, at about 12.45 p.m. The father of accused went to the house of his another sister Rukmini, and told her about the same. On the same day at about 7 p.m., another sister Rukmini of the father of the deceased, got information on the telephone from Nagesh, accused No.1, that Anita was burnt in the house. Rukmini, accordingly, informed to Anita's father. They went to the house of Anita. They found several persons were gathered in front of the house and Anita was lying in the burnt condition on the floor of

the house. They went inside the house. The deceased narrated them that after returning from their house, her mother-in-law quarrelled and abused her. Deceased resisted and told her not to abuse. All accused, threatened her and left the house At about 6 to 6.30 p.m.. In the evening, the father-in-law of Anita, accused No.2, had closed the door of the house from inside and forced Anita to sit on the floor by pooling her hair. Accused No.3, mother-in-law poured kerosene on her. Accused No.1, husband, blazed the match stick and threw on her person and set her on fire. Thereafter, all the three accused closed the door of the house and went away. In spite of her shouting, no neighbours came to extinguish fire or for any help.

5. Anita's father and other relatives, immediately, took Anita to Sasoon hospital in the same rickshaw. One Dr. Sunil Wadile had examined her. She had sustained 80% burn injuries on her various parts of the body. The said Dr. Sunil Wadile, P.W. 1, at the time of examining deceased, recorded history about the incident. She had narrated the incident again. Anita was admitted in burn ward No.24. The police constable on the duty at Sasoon hospital and Police Chowki, had been informed

about the same. The said police constable gave information on phone to Kalewadi Police Chowki, where police constable Bhalerao (P.W. 9) was on duty. He gave information to A.P.I. Sampatrao Pokhran, who went to the spot along with constable Devkate. He further asked constable Bhalerao to prepare requisition for Special Judicial Magistrate to record the dying declaration of the burnt lady. They went along with police constable Dhawale to Sasoon hospital and there in his presence, Dr. Wadile, (P.W.1), examined Anita. Deceased Anita was found in the fit condition to give her statement. The said A.P.I. Pokhran (P.W.10) also recorded the statement of Anita. The said statement was treated, as complaint. The said complaint was registered as CRI.No. 24/1998 on 25/1/1998 at about 00,15 hours.

6. The Special Judicial Magistrate, Khomne, (P.W.5) as requisitioned, came to the hospital and in the presence of Dr. Wadile, P.W. 1, recorded the dying declaration of Anita, and handed over the copy to the police (Exh.18).

7. On the next morning plastic cane containing some

kerosene and burnt pieces of clothes, from the spot of incident, were seized and spot panchanama was accordingly recorded. The accused were arrested. The statements of neighbours were recorded. On the next day of incident i.e. on 27/1/1998, at about 6.30 a.m, deceased succumbed to the burnt injuries. The death certificate was accordingly issued. The inquest panchanama of the dead body of the Anita was recorded (Exh.25) and the body was sent for autopsy. A.P.I. Pokhran, who recorded spot panchanama, also recorded the statements of Anita's parents and relatives. Various muddemal articles were seized under the panchanama (Exh.21/3. Chemical Analysis report and certificate and post mortem notes were recorded accordingly Exh.41).

8. The accused denied the charges and trial commenced further, before the Sessions Court, Pune. The defence was of simple and total denial. The prosecution has examined 10 witnesses and tendered several documents in support of their case. Out of that three neighbours not supported the prosecution case i.e. P.W.2 Muktabai, P.W.3 Vimal, P.W. 4 Kusum. Other witnesses P.W., Dr. Sunil Wadile, P.w.5 Special Judicial Magistrate, Khomne, P.W. 6 Arjun (Anita's father), P.W. 7, Balu Ganpat,

panch witness to the spot panchanama, P.W. 8, Rukmini (Anita's father's sister). P.W.9 Police Constable Bhalekar, P.W. 10, I.O., Pokhran, have supported and backed the prosecution case.

9. The post-mortem note shows that the "cause of Anita's death was shock, toxiety due to burn". All the burnt injuries was ante-mortem in nature. The inquest panchama and spot panchanma are in tune with the post mortem notes. There was no denial on the part of accused that her death was on account of burn injuries. There is no much dispute in regard to the factum of Anita's death and cause of her death. The testimony of the Doctor also supports the injuries and cause of her death. The nature of injuries were to the extent of 80% and were superficially deep. The evidence also supports that she succumbed those burn injuries on 27/1/1998 at about 6.30 a.m.

10. The learned Judge after considering the material, as well as, evidence led by the prosecution also observed that there was nothing on the record even to suggest the possibility of suicidal or accidental death of Anita-deceased. There was not a single

suggestion to the effect put to the prosecution witnesses. There was no such explanation or any statement given by the accused under Section 313 of Cr.P.C. There was only simple and evasive denial

11. The basic question is whether the conviction based on the circumstantial evidence is supported by the cogent and the material evidence on the record or not as there was no eye witnesses in the case. The dying declaration (Exh.18) of the deceased Anita, backed up by the testimony of P.W.5, Jaywant Khomne, A special Judicial Magistrate, who recorded the said dying declaration and the evidence of, P.W.1, Dr. S.R. Wadile, in whose presence, the dying declaration was recorded in a conscious condition of Anita-deceased at the relevant time, sufficient to prove the prosecution case, apart from the testimony of other witnesses, P.W. 10, I.O. and P.W. 6, father. As recorded above, immediately after the incident. The deceased was hospitalised, P.W. 1, Dr. Wadile, testimony has supported the prosecution case; (a) deceased Anita was admitted in burn ward. (b) He examined her and noted 80% burn injuries, (c) he recorded the history of the patient, when she was in a conscious state of mind and

condition to give such statement. (d) the narration of deceased, about the incident at the residence of the victim's husband and respective role played by the appellant-accused Nos.1 to 3. (e) on 26/1/1998, in the morning, Special Judicial Magistrate, Mr. Khomne, (P.W). 5 recorded the dying declaration. (f) The endorsement on the dying declaration, by the Doctor (P.W.1 about the conscious and fit mental condition of the deceased.

12. The special Judicial Magistrate P.W. 5 Khomne, categorically stated, that he examined deceased in presence of Doctor, P.W.1. (a) She was in a fit condition to give statement. (b) Doctor had made endorsement accordingly on the said paper in my presence. (d) after verifying her normal conditions by putting formal questions and her conscious condition and after completing due formality, as she was mentally prepared to give her statement. (e) P.W. 5, Jaywant Khomne, asked her how she got burn. (f) It is deposed that she told that accused No.3 father-in-law closed the door of the house and bolted from inside. (g) He pulled her hairs and made her to sit on the floor. (h) the Mother-in-law, accused No.3, poured kerosene on her.

(i) the accused No.1, husband, set her ablaze by lighting the match stick. Hence she caught fire and sustained burnt injuries. All the accused, thereafter, ran away. The said statement was accordingly, read over to the victim and she admitted it to be correct. The Left hand thumb impression of the victim on the statement, which was duly attested, was taken. The Magistrate has also signed attestation. There is no lacuna pointed out and or suggested and or placed on record. The testimony of this witness remained intact. There are no omissions and contradictions suggested or pointed out.

13. The other circumstantial evidence including Exh.21, spot panchanama, shows the condition of the room where the incident occurred. The panchanama was recorded immediately after the incident. The burnt matchstick box was also found in the said room under the cooking table.

14. The father P.W.6 of the victim deposed about the ill-treatment and regular harassment by the accused to the deceased Anita. Those complaints were made by the deceased to the father even during the festivals,

including Gudipadva, Diwali and Sankrant and whenever she visited and met her parents. The father of the victim had also informed about the said ill-treatment to P.W. 8 Rukmini, who is the aunt of the victim, and resident of the same village Rukminibai, P.W. 8, also deposed about harassment by the accused to the victim before the death. She intervened on earlier occasion and told the in-laws of the victim not to do the same. The victim had also complained immediately, after the incident, to Rukmini, P.W.8 and father, P.W. 6, when they went into the room where the victim was lying in burnt condition.

15. Sampatrao Pokhran, the Investigating Officer, P.W.10, has also deposed the entire investigation. This witness has also supported the case of the prosecution. Every link, proved by these witnesses, lead to one conclusion that all the accused had common intention, and knowingly poured kerosene on the victim and burnt her. P.W.9, Bhalekar, Police Constable, proved the link of sending requisition for recording dying declaration. Post-mortem notes, arrest panchanama, chemical analyser's certificate, complaint of Anita recorded by P.W.10 and registration of the offence, all these,

complete the links with the circumstantial evidence against the accused. There are no mitigating circumstances to reduce the punishment as awarded.

16. Therefore, after reappreciating the evidence on the record, as well as, the materials, we see that the order of conviction is proper, including imposition of the punishment to all the accused to suffer imprisonment for life. We have also no manner of doubt that appellants-accused have committed this gruesome murder. There is no merit in the appeal.

17. In the result appeal fails, and is dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]